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United States Circuit Court, Southern District of New York.

WILLIAM H. ROBERTS v. RENSSELAER R. NELSON.

Where the record of a suit at the time it is removed from a state to a Federal court under the Act of 1789, shows the matter in dispute to exceed \$500, a subsequent reduction of the demand by the plaintiff in his pleadings will not entitle him to have the case remanded.

Nor will the fact that the suit as developed by the pleadings subsequent to the removal, includes a claim not cognisable in a Federal court, entitle it to be remanded. The jurisdiction of the Federal court having once attached, no subsequent event can divest it.

In August 1870 an action was commenced in the Supreme Court of New York by summons, commanding defendant to appear or have judgment entered against him for \$330, with interest from July 1st 1858. Before any other steps were taken the defendant appeared and filed a petition to have the case removed to the United States Circuit Court on the ground that he was a citizen of Minnesota. The state court granted the petition and the cause was removed. Plaintiff then filed his declaration in the Circuit Court showing a claim for \$187.25, with interest from January 1st 1859, and also another claim for \$43.25, as assignee of one Pierce, a citizen of New Jersey, and thereupon moved to remand the case to the New York court. *Held*, that the cause could not be remanded.

THIS was a motion on the part of the plaintiff for an order remanding the suit to the Supreme Court of the state of New York.

R. S. Guernsey, for plaintiff.

Edward H. Hawke, for defendant.

BLATCHFORD, J.—This suit was commenced in the Supreme Court of New York by the service on the defendant of a summons dated August 1st 1870, unaccompanied by the service or filing of a complaint. The summons is called on its face a “summons for a money demand on contract.” It notifies the defendant that the complaint will be filed without specifying when, and requires him to answer it within twenty days after the service of the summons, and notifies him that if he shall fail to do so, the plaintiff will take judgment against him for the sum of \$330.25, with interest from July 1st 1858, besides the costs of the action. The time for the defendant to appear or answer was extended by consent until October 15th 1870. The defendant entered his appearance in the state court in the suit on the 14th of October,

and at the same time filed therein a petition praying for the removal of the suit into this court, and offered proper surety therefor. On the 17th of October the state court, on such petition, entry of appearance, and offer of surety, made an order stating that it was made to appear to the satisfaction of that court that this suit was commenced in that court by a citizen of the state of New York against a citizen of the state of Minnesota, and that the matter in dispute exceeded the sum of \$500, exclusive of costs, and ordering that such surety be accepted, and that the suit be removed for trial into this court. The proceedings for removal were instituted under the provisions of the 12th section of the Act of September 24th 1789: 1 U. S. Stat. at Large 79. The petition presented to the state court by the defendant stated that the matter in dispute in the suit, and for which the suit was brought, exceeded the sum of \$500, exclusive of costs, and a copy of the summons was annexed to the petition. No proceeding other than the service of the summons took place in the state court prior to the filing by the defendant of the papers for removal. Copies of the process and the other papers in the suit were entered in this court, and subsequently the plaintiff filed a declaration in this court, in the suit in assumpsit, in which he counts on an indebtedness due to him by the defendant July 1st 1858, amounting to \$287.25, less a payment thereon of \$100 April 16th 1858, and also on an indebtedness due to one Pierce by the defendant April 10th 1858, for merchandise then sold by Pierce to the defendant, amounting to \$43.25, and an assignment of such claim by Pierce to the plaintiff in 1867. The declaration claims to recover \$230.50, and interest thereon from July 1st 1858, and avers that the plaintiff brought this suit in the Supreme Court of the state of New York by summons, and that an order was made in that court, on the motion of the defendant, transferring the action to this court. The declaration also states that the suit is brought by the plaintiff in his own behalf, and also in behalf of his assignor, Pierce, "a citizen of the state of New Jersey since the year 1860." After filing this declaration the plaintiff now makes the motion to remand, on an affidavit alleging that the declaration is for \$187.25, and interest thereon from January 1st 1859, and for the Pierce claim, assigned to the plaintiff, and interest thereon from July 1st 1858, and that Pierce

is not now, and has not been since the year 1860, a citizen of the state of New York, but a citizen of the state of New Jersey.

One ground argued in support of the motion is, that the amount claimed in the summons was only \$330.25, and interest from July 1st 1858; that this amount could not be said to be over \$500; that it might or might not have brought the recovery to over \$500; and that the rate of interest might have been, by agreement, such as to have made the recovery less than over \$500. The petition in the state court avers positively that the matter in dispute in the suit, and for which the suit is brought, exceeds the sum of \$500, exclusive of costs. This makes a case directly within the 12th section of the Act of 1789. The right of removal depends upon the facts as they exist when the suit is commenced. The language of the section is that if "a suit be commenced," &c., "and the matter in dispute exceeds," &c. The plaintiff does not now assert that the matter in dispute when the suit was commenced, as shown by the summons, did not exceed \$500, exclusive of costs, or that the sum of \$330.25, with interest from July 1st 1858 to August 1st 1870, did not amount to \$500. On the record in the state court it must be held that the matter in dispute exceeded, when the suit was commenced, the sum of \$500, exclusive of costs. The jurisdiction of this court having once attached, no subsequent event could divest it: *Clarke v. Mathewson*, 12 Pet. 164. Therefore, the reduction of the amount of the claim by the declaration filed in this court cannot affect the question.

The second ground in favor of the motion to remand is, that this court is forbidden to take cognisance of the suit. The 11th section of the said Act of 1789 provides that this court shall not have cognisance of any suit to recover the contents of any chose in action in favor of an assignee, unless a suit might have been prosecuted therein to recover the said contents, if no assignment had been made, except in cases of foreign bills of exchange. It is claimed that the debt of \$43.25 is a chose in action; that a suit for it could not have been prosecuted in this court by the assignor, Pierce, a citizen of New Jersey, against the defendant, a citizen of Minnesota; that this court has no cognisance of this suit so far as the debt for the \$43.25 is concerned; and that therefore this court has no cognisance of any part of the suit.

Admitting that this court has no cognisance of the suit, so far as concerns the right to recover the amount due on the claim assigned by Pierce to the plaintiff, it by no means follows that it has no right to proceed in the suit in respect to the other claim. I think it has. The asserting by the plaintiff, in his declaration, of a right to recover the \$43.25 in this court in the suit, when he has no such right, cannot be allowed to give him the right, on his own motion, to send the entire case back to the state court, and deprive the defendant of a right to a trial in this court in respect to the other claim set up in the declaration. Nor is it a ground for granting the motion to remand the entire suit that if the claim for the \$43.25 be stricken out, the other claim will, with interest, not amount to over \$500, exclusive of costs. The jurisdiction of this court over the case having been complete when it was removed, cannot be ousted by the action of the plaintiff in inserting such a claim in the declaration as the claim for the \$43.25. Nor is the insertion of such claim a ground for remanding so much of the case as concerns such claim. If this court cannot give judgment for the plaintiff for such claim, he can sue to recover its amount in some proper court. If he does not desire to proceed in this court in respect of the other claim, he can discontinue the entire suit. But, on the record, the defendant has a right now to retain the case in this court, and the motion to remand must be denied.

Supreme Court of New Brunswick.

BURKE v. NILES.

A lot of land was described in a grant as "beginning at a stake standing on the bank or edge of Round Lake, thence," &c. (describing three lines of the lot), "to a stake standing on the westerly bank or edge of the said lake, and thence following the several courses of the said bank or edge to the place of beginning."

Held, 1st. That the title under the grant extended to the margin of the lake, and was not limited by a stake standing on the bank. 2d. That the grantee was entitled to land formed in front of the lots by the gradual receding of the waters of the lake.

Under a grant of a "lake," reserving to the grantor all mines and minerals, the soil of the lake passes.

TRESPASS for breaking and entering the plaintiff's close and